

2009 DRAFTING REQUEST

Bill

Received: **08/17/2009**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Kathleen Vinehout (608) 266-8546**

By/Representing: **Joel Nilsestuen**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Vinehout@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes in agricultural producer security program

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 01/28/2010	wjackson 01/28/2010		_____			State
/1			rschluet 01/28/2010	_____	lparisi 01/28/2010	cduerst 02/05/2010	

FE Sent For:

at
intro

<END>

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/?	btradewe	1 wLj 1/28		_____			

FE Sent For:

<END>

Tradewell, Becky

From: Nilsestuen, Joel
Sent: Thursday, August 13, 2009 4:06 PM
To: Tradewell, Becky
Subject: FW: Producer Security Draft with PSC suggestions (7-30-09).doc

Hi Becky,

Sen. Vinehout would like the attached changes to the producer security program drafted. I'm sending a hardcopy as well. There is no rush with drafting at this point.

I will be out of the office until Thursday the 20th, but will be available thereafter to discuss if needed.

Thanks Becky --Joel

Joel Nilsestuen
Office of Sen. Kathleen Vinehout

PO Box 7882
Madison, WI 53707-7882

(608) 266-8546
Joel.Nilsestuen@legis.wisconsin.gov

From: Moll, Keeley A - DATCP [mailto:Keeley.Moll@Wisconsin.gov]
Sent: Thursday, August 06, 2009 3:40 PM
To: Nilsestuen, Joel
Subject: FW: Producer Security Draft with PSC suggestions (7-30-09).doc

Randy asked that I send this on to you! ☺

Let me know if there's a good time to meet!

Keeley

From: Moll, Keeley A - DATCP
Sent: Wednesday, August 05, 2009 7:19 AM
To: Plata (Zepnick), Christian - LEGIS
Subject: FW: Producer Security Draft with PSC suggestions (7-30-09).doc

Hey Christian:

Here's the draft that incorporates the Producer Security Council suggested changes ☺ Hope you are enjoying your vacation!!! ☺

Keeley

From: LeRoy, Kevin J - DATCP
Sent: Tuesday, August 04, 2009 4:01 PM

08/13/2009

To: McPherson, Jeremy S - DATCP

Cc: Hanson, Eric J - DATCP; Moll, Keeley A - DATCP; Jenkins, Janet A - DATCP; Klopp, Reid W - DATCP

Subject: Producer Security Draft with PSC suggestions (7-30-09).doc

Reid had a couple suggestions to polish-up the changes requested by producer security council. See the attached document.

Thanks,
Kevin

08/13/2009



KATHLEEN VINEHOUT
STATE SENATOR
WISCONSIN SENATE DISTRICT 31

To: Becky TradeWell

- ☐ In response to your recent request.
- ☐ I thought you might be interested in the enclosed material.
- ☐ Please review and contact me.

*Hard copy of charges
to producer security
program requested by
Sen. Vinehout.*

State Capitol • P.O. Box 7882 • Madison, WI 53707-7882
Office: (608) 266-8546 • Fax: (608) 267-2871
Toll Free: (877) 763-6636 • Sen.Vinehout@legis.wisconsin.gov

Department of Agriculture, Trade and Consumer Protection

**PROPOSED AGRICULTURAL PRODUCER
SECURITY LEGISLATION**

**Preliminary Discussion Draft
August 4, 2009**

Plain Language Analysis

This bill modifies the agricultural producer security program administered by the department of agriculture, trade and consumer protection (DATCP) under ch. 126, Stats. The current program helps to protect agricultural producers against financial defaults by “contractors,” including grain warehouse keepers, grain dealers, milk contractors and vegetable contractors (the vegetable security program applies only to processing vegetables, not fresh market vegetables).

Background

Currently, under ch. 126, Stats., contractors must be licensed by DATCP. In most cases, licensed contractors must file annual financial statements with DATCP and must contribute to Wisconsin’s agricultural producer security fund (there are some exceptions). Fund contributions vary based on a contractor’s size, financial condition and risk practices.

If a contributing contractor defaults on payments to producers, DATCP may draw on the fund to reimburse producers for part of their loss. DATCP conducts a formal administrative “recovery proceeding” to audit producer claims and determine the amount of allowed claims (the statute prescribes a reimbursement formula).

The current fund balance is adequate to cover most, but not all, individual contractor defaults. Under current law, DATCP is required to purchase “contingent financial backing” (such as a surety bond or letter of credit) to supplement fund payments in the event that a default exceeds the capacity of the fund. In some limited circumstances, contractors may also have individual security on file with DATCP (in addition to or in lieu of fund coverage).

DATCP has repeatedly sought, but has not been unable to acquire, “contingent financial backing” in the form of a surety bond or letter of credit. DATCP has instead obtained a trade credit insurance policy to provide some “contingent financial backing” for the fund. Current arrangements provide security protection for some, but not all, producers. Under current law, an agricultural producer security council (including representatives of producers and contractors) advises DATCP on the administration of ch. 126, Stats., including the acquisition of “contingent financial backing.”

Contingent Financial Backing

Under current law, DATCP is required to obtain a specified amount of “contingent financial backing” for the fund, but may acquire a smaller amount if necessary to avoid excessive acquisition costs or repayment liabilities. The current law specifies the types of “contingent financial backing” that DATCP must acquire, but those types are not currently available.

Under this bill, DATCP is authorized but not required to obtain “contingent financial backing.” This bill also expands DATCP’s authority to obtain alternative forms of “contingent financial backing.” This bill authorizes DATCP to limit or impose conditions on producer claim payments, consistent with the terms of the “contingent financial backing” used to make those payments.

Contractor License Fees

Chapter 126, Stats., currently specifies contractor license fee amounts, but authorizes DATCP to change those amounts by rule. DATCP has already done so for grain dealers, grain warehouse keepers and vegetable contractors (see chs. ATCP 99 and 101, Wis. Adm. Code). This bill therefore eliminates the obsolete statutory amounts for those contractors. This bill retains current statutory amounts for milk contractors, because DATCP has not yet changed those amounts by rule.

Under current law, license fees for grain dealers are based on the *dollar value* of grain procured. Under this bill, license fees for grain dealers must be based on the *volume* of grain procured, rather than the dollar value of grain procured (to reduce variation based on volatile commodity prices).

Contractor Fund Assessments

Chapter 126, Stats., currently specifies contractor fund assessment amounts, but authorizes DATCP to change those amounts by rule. DATCP has already done so (see chs. ATCP 99, 100 and 101, Wis. Adm. Code). This bill therefore eliminates the obsolete statutory amounts.

This bill authorizes DATCP to increase contractor fund assessments by emergency rule if DATCP determines that emergency action is needed to restore a fund balance that has been substantially depleted by a recovery proceeding.

Contractor Financial Statements

Under current law, contractors above a certain size must file a *reviewed* or *audited* annual financial statement with DATCP. This bill increases some of the current size thresholds at which contractors are required to file annual financial statements. This bill also allows more of the affected contractors to file (less expensive) *reviewed* financial statements, rather than (more expensive) *audited* financial statements. For grain dealers and milk contractors, this bill expresses size thresholds in terms of *commodity volume* rather than *dollar value* (to reduce variation based on volatile commodity prices).

- Under current law, a grain dealer must file an annual financial statement with DATCP if the grain dealer paid more than \$500,000 for producer grain in the grain dealer's last-completed fiscal year. Under current law, the financial statement must be an *audited* financial statement if the grain dealer paid more than \$3 million for producer grain in that fiscal year (or more than \$2 million in each of the last 2 fiscal years). Under this bill, a grain dealer must file an annual financial statement with DATCP if the grain dealer paid for more than 200,000 *bushels of producer grain* in the grain dealer's last-completed fiscal year. Under this bill, the financial statement must be an *audited* financial statement if the grain dealer paid for more than 2.5 million *bushels of producer grain* in that fiscal year.
- Under current law, a grain warehouse keeper must file an annual financial statement with DATCP if the warehouse keeper has more than 300,000 bushels of storage capacity. Under current law, the financial statement must be an *audited* financial statement if the warehouse keeper has more than 500,000 bushels of storage capacity. Under this bill, a grain warehouse keeper must file an annual financial statement with DATCP if the warehouse keeper has more than 300,000 bushels of storage capacity (same as current law). But under this bill, the financial statement is not required to be an *audited* financial statement unless the warehouse keeper has more than 1.5 million bushels of storage capacity.
- Under current law, a milk contractor must file an annual financial statement with DATCP if the milk contractor incurred more than \$1.5 million in milk producer payroll obligations during the contractor's last-completed fiscal year. The financial statement must be an *audited* financial statement if the milk contractor incurred more than \$6 million in milk producer payroll obligations during the contractor's last-completed fiscal year. Under this bill, a milk contractor must file an annual financial statement with DATCP if the milk contractor incurred payroll obligations for more than 150,000 *hundredweight* of producer milk during the contractor's last-completed fiscal year. Under this bill, the financial statement must be an *audited* financial statement if the contractor incurred payroll obligations for more than 2.5 *million hundredweight* of producer milk during that fiscal year.
- Under current law, a vegetable contractor must file an annual financial statement with DATCP if the contractor incurred more than \$500,000 in producer contract obligations during the contractor's last-completed fiscal year. The financial statement must be an *audited* financial statement if the vegetable contractor incurred more than \$4 million in producer contract obligations during that fiscal year. Under this bill, a vegetable contractor must file an annual financial statement with DATCP if the contractor incurred more than \$500,000 in producer contract obligations during the contractor's last-completed fiscal year (same as current law). But under this bill, the financial statement is not required to be an *audited* financial statement unless the vegetable contractor incurred more than \$7.5 million in producer contract obligations during that fiscal year.

Contractors Disqualified from Fund Participation

Under current law, certain contractors may be disqualified from participating in the fund. This bill clarifies disqualification standards and procedures, and requires a disqualified contractor to notify producers of the disqualification. DATCP may, by rule or order, spell out the form and content of the notice. Under this bill, as under current law:

- A disqualified grain dealer or vegetable contractor must pay cash on delivery for all producer grain or producer vegetables procured in this state.
- A disqualified milk contractor, even if still licensed, may not engage in milk procurement activities for which a license is required if the contractor's financial ratios fall below specified levels.

Grain dealers and vegetable contractors; deferred payment contracts

Some grain and vegetable contractors use "deferred payment" procurement contracts that provide for delayed payments to producers (for example, the parties may agree to delay payment until the next tax year). "Deferred payment" contracts may be mutually beneficial to producers and contractors, but they entail greater financial risk to producers and the fund. This bill does not prohibit the use of "deferred payment" contracts. However, it limits financial risks to the fund by requiring DATCP to disallow the following producer claims in a recovery proceeding under ch. 126, Stats.:

- A grain producer's claim for payments that first became due under a grain procurement contract more than 120 days after the producer delivered the grain to the grain dealer pursuant to the contract.
- A vegetable producer's claim for payments that first became due under a vegetable procurement contract after January 31 of the year following the year in which the vegetables were harvested.

Jointly-Owned or Jointly-Operated Entities

The current law secures contractor payments to a producer (or producer agent), even if the contractor and the producer (or producer agent) are *jointly-owned or jointly-operated entities*. For example, under current law, a contractor must make fund contributions to secure its payments to a producer (or producer agent), even though *the same persons* own and operate both the contractor and the producer (or producer agent). Under current law, a producer (or producer agent) may also file a default claim against a contractor, and obtain reimbursement from the fund, even though *the same persons* own or operate both entities.

This bill changes the current treatment of jointly-owned and jointly-operated entities, as follows:

- Under this bill, a grain dealer, milk contractor or vegetable contractor may reduce the contractor's fund contribution requirements, financial statement filing requirements and security filing requirements by excluding, from the calculation used to determine those

requirements, the contractor's obligations to a producer (or producer agent) who meets all of the following criteria:

- The producer (or producer agent) owns more than 50% of the contractor, or persons who collectively own more than 50% of the producer (or producer agent) also collectively own more than 50% of the contractor.
 - The producer (or producer agent) voluntarily and permanently waives the right to file any default claim against the contractor in a recovery proceeding under ch. 126, Stats. The producer (or producer agent) must file the voluntary waiver with DATCP in writing, on a form provided by DATCP.
- Under this bill, DATCP must deny a producer's (or producer agent's) default claim against a jointly-owned contractor if the claimant is eligible to waive and has voluntarily waived the right to file any default claim against that contractor (see above).
 - Under this bill, DATCP may *also* deny a producer's (or producer agent's) default claim against a contractor if DATCP finds that any of the following circumstances exists, and that the circumstance causes the claim to be an unfair or unreasonable claim against the fund, *regardless* of whether the claimant has waived the right to file that claim:
 - The claimant owned more than 50% of the defaulting contractor at the time of the default, or at relevant times prior to the default.
 - Persons who collectively owned more than 50% of the claimant also owned more than 50% of the defaulting contractor at the time of the default or at relevant times prior to the default.
 - The claimant, or any of the claimant's owners, officers or managers, had substantial management control at relevant times over those parts of the defaulting contractor's operations that are implicated in the default.
 - The claimant, or any of the claimant's owners, operators or managers, conspired with the defaulting contractor, or any of the contractor's owners, officers or managers, to create a default and resulting claim against the fund.

Other Default Claims Disallowed

Under this bill, DATCP must disallow a default claim filed by a producer (or producer agent) in a "recovery proceeding" if any of the following apply:

- The contractor gave the claimant a check in payment of the claim amount but the claimant failed to cash the check within 30 days.
- The claim arises under a grain deferred payment contract under which payment first became due more than 120 days after the grain was delivered.
- The claim arises under a vegetable deferred payment contract under which payment for vegetables delivered prior to December 31 of any year first became due after January 31 of the following year.
- The claim pertains to grain, milk or vegetables that the claimant never tendered or delivered to the contractor (does not apply to contracted vegetable acreage that *the vegetable contractor* chooses to leave unharvested).

Milk Contractors; Security

Under current law, certain milk contractors may be required to file individual security with DATCP to secure payroll obligations to milk producers or producer agents (security may be in addition to, or in lieu of fund assessments). The amount of security is based on the contractor's milk payroll obligations as reported to DATCP. This bill modifies current security filing requirements and related milk payroll reporting requirements.

Under current law, a milk contractor must annually report to DATCP the largest amount of *unpaid* milk producer payroll obligations that the milk contractor had at any time during the milk contractor's last-completed fiscal year. Under this bill, a milk contractor must annually report either of the following:

- The largest amount of *unpaid* milk producer payroll obligations that the milk contractor had at any time during the milk contractor's last-completed fiscal year.
- The largest amount of milk producer payroll obligations (*paid or unpaid*) that the milk contractor *incurred* in any month during the milk contractor's last-completed fiscal year.

Under current law, a milk contractor who files security with DATCP must notify DATCP if, at any time during the license year, the milk contractor's *unpaid* milk producer payroll obligations exceed the amount last reported. Under this bill, if a milk contractor has filed security with DATCP, the milk contractor must file monthly reports with DATCP showing either of the following:

- The current total amount of the milk contractor's *unpaid* milk producer payroll obligations.
- The total amount of milk producer payroll obligations (*paid or unpaid*) that the milk contractor incurred during the preceding month.

Under current law, a licensed milk contractor must file security with DATCP if the milk contractor's financial ratios (as shown on the contractor's latest annual financial statement) fall below specified levels and the contractor has an "estimated default exposure" of more than \$20 million. The amount of security (in that case) must equal the milk contractor's "estimated default exposure" minus \$20 million.

This bill changes the current calculation of "estimated default exposure" for security filing purposes. Under current law, a milk contractor's "estimated default exposure" means 75% of the highest reported amount of *unpaid* milk producer payroll obligations that the contractor has had at any time *since the beginning of the contractor's last-completed fiscal year*. Under this bill, a milk contractor's "estimated default exposure" means 75% of the lower of the following:

- The highest reported amount of *unpaid* milk producer payroll obligations that the milk contractor has had at any time *in the last 12 months*.
- The highest reported amount of milk producer payroll obligations (*paid or unpaid*) that the milk contractor has incurred *in any single month in the last 12 months*.

Under current law, if a milk contractor who contributes to the fund also files security with DATCP, the milk contractor may pay a lower fund assessment. This bill changes the calculation of that lower assessment, based on the changed calculation of “estimated default exposure” under this bill (see above).

Obstructing Inspection

This bill prohibits a contractor, or the contractor’s officer, employee or agent, from assaulting, restraining, threatening, intimidating, impeding, interfering with or otherwise obstructing a department officer, employee or agent in the performance of his or her duties under the producer security law.

Obsolete Provisions

This bill deletes a number of obsolete transitional provisions from current law. The deletion of these provisions does not change current law. The obsolete provisions include:

- A provision authorizing a startup loan from the agricultural resource management fund to initiate the agricultural producer security fund (the loan, made in 2002, has now been repaid).
- A provision requiring a contractor who filed security with DATCP before September 1, 2002, to maintain that security until DATCP released it (DATCP has now released all security filed before September 1, 2002).
- Initial transition provisions related to security filing amounts and recordkeeping requirements (initial transition dates are now past).

Other Changes

This bill makes a number of minor technical, organizational and drafting changes to clarify current law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 126.05(2) of the statutes is amended to read:

2 126.05(2) The department shall deposit into the fund all fees, surcharges, assessments,
3 reimbursements, and proceeds of contingent financial backing that the department collects under
4 this chapter. The department shall keep a record by contractor and industry of all deposits. The
5 department shall keep a record by industry of all withdrawals

6 **SECTION 2.** 126.06(1)(intro.) of the statutes is amended to read:

1 126.06(1)(intro.) DEPARTMENT TO ACQUIRE. Using moneys appropriated under s.
2 20.115(1)(v), the department ~~shall~~ may acquire contingent financial backing to secure payment
3 under s. 12.72(2) of claims against contributing contractors, as defined in s. 126.68(1). The
4 contingent financial backing may be in one or more of the following forms:

5 **SECTION 3.** 126.06(1)(c) and (d) of the statutes are created to read:

6 126.06(1)(c) Trade credit insurance.

7 (d) Other appropriate contingent financial backing.

8 **SECTION 4.** 126.06(2)(intro.) of the statutes is amended to read:

9 126.06(2)(intro.) AMOUNT. The department ~~shall~~ may acquire contingent financial backing
10 under sub. (1) in the amount that, in the department's judgment, is sufficient to meet reasonably
11 foreseeable needs under s. 126.72(2), except as follows:

12 **SECTION 5.** 126.08 of the statutes is repealed.

13 **SECTION 6.** 126.11(4)(intro.) and (a) of the statutes are amended to read:

14 126.11(4)(intro.) LICENSE FEES AND SURCHARGES. A grain dealer applying for an annual
15 license under this section shall pay the following fees and surcharges, ~~unless~~ in amounts that the
16 department ~~specifies a different fee or surcharge amount~~ shall specify by rule:

17 (a) A nonrefundable basic license ~~processing~~ fee of \$25.

18 **SECTION 7.** 126.11(4)(b)(intro.) of the statutes is renumbered (b) and amended to read:

19 126.11(4)(b) ~~The following license fees~~ A supplementary license fee based on the grain
20 ~~dealer's reported grain payments~~ volume reported under sub. ~~(9)(a)~~ (9)(d), less any credit provided
21 under sub. (6):

22 **SECTION 8.** 126.11(4)(b)1. to 3. of the statutes are repealed.

23 **SECTION 9.** 126.11(4)(c) to (g) of the statutes are amended to read:

1 126.11(4)(c) A supplementary license fee ~~of \$45~~ for each truck, in excess of one truck, that
2 the grain dealer uses to haul grain in this state.

3 (d) A license surcharge ~~of \$425~~ if the grain dealer files a financial statement under s.
4 126.13(1) that is not an audited financial statement.

5 (e) A license surcharge ~~of \$500~~ if the department determines that, within 365 days before
6 submitting the license application, the applicant operated as a grain dealer without a license in
7 violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund
8 assessments that are still due for any license year in which the applicant violated sub. (1).

9 (f) A license surcharge ~~of \$100~~ if during the preceding 12 months the applicant failed to
10 file an annual financial statement required under s. 126.13(1)(b) by the deadline specified in
11 s. 126.13(1)(c).

12 (g) A license surcharge ~~of \$100~~ if a renewal applicant fails to renew a license by the license
13 expiration date of August 31. This paragraph does not apply to a grain dealer who is exempt under
14 sub. (2) and is voluntarily licensed.

15 **SECTION 10.** 126.11(6) of the statutes is amended to read:

16 126.11(6) FEE CREDITS. If the balance in the fund contributed by grain dealers exceeds
17 ~~\$2,000,000~~ \$2 million on ~~June 30~~ May 31 of any license year, the department shall credit 50% of
18 the excess amount against license fees charged under sub.(4)(b) to contributing grain dealers who
19 file timely license renewal applications for the next license year. The department shall credit each
20 contributing grain dealer on a pro-rated basis, in proportion to the total fees that the grain dealer
21 paid under sub. (4)(b) for the 4 preceding license years as a contributing grain dealer.

22 **SECTION 11.** 126.11(9)(a) of the statutes is amended to read:

1 126.11(9)(a) The total amount that the applicant paid; during the applicant's last completed
2 fiscal year; for producer grain procured in this state, excluding any amounts properly identified
3 under par. (e)3. If the applicant has not yet operated as a grain dealer in this state, the applicant
4 shall estimate the amount that the applicant will pay during the applicant's first complete fiscal year
5 for producer grain procured in this state, excluding any amounts properly identified under par. (e)3.

6 ***[DRAFTER'S NOTE: The amount reported under s. 126.11(9)(a) is used for the***
7 ***following purposes:***

- 8
- 9 ***▪ To calculate grain dealer fund assessments under s. 126.15.***
 - 10 ***▪ To determine, under s. 126.16(1)(a), whether a grain dealer with negative equity is***
11 ***required to file security with DATCP when DATCP licenses the grain dealer for the***
12 ***first time.]***

13

14 **SECTION 12.** 126.11(9)(d) and (e) of the statutes are created to read:

15 126.11(9)(d) The total number of bushels of producer grain that the applicant procured in
16 this state during the applicant's last completed fiscal year. If the applicant has not yet operated as a
17 grain dealer in this state, the applicant shall estimate the total number of bushels of producer grain
18 that the applicant will procure in this state during the applicant's first complete fiscal year.

19 ***[DRAFTER'S NOTE:***

- 20
- 21 ***• The amount reported under s. 126.11(9)(d) is used to calculate part of the grain***
22 ***dealer's license fee under s. 126.11(4). See s. 126.11(4)(b) as modified by SECTIONS 7***
23 ***and 8 of this bill.***
 - 24 ***• The amounts reported under ss. 126.11(9)(d) and (e)2. are used to determine grain***
25 ***dealer financial statement filing requirements under s. 126.13. See ss. 126.13(1) and***
26 ***(3) as modified by SECTIONS 13 to 16 of this bill.]***

27

28 (e) All of the following information related to each producer or producer agent that under s.
29 126.70(1)(b) has permanently waived the right to file a default claim against the applicant:

30 1. A copy of the written waiver that the producer or producer agent has filed with the
31 department under s. 126.70(1)(b).

1 2. The total number of bushels of producer grain that the applicant procured in this state
2 from that producer or producer agent during the applicant's last-completed fiscal year. If the
3 applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total
4 number of bushels of producer grain that the applicant will procure in this state from that producer
5 or producer agent during the applicant's first complete fiscal year.

6 3. The total amount that the applicant paid during the applicant's last-completed fiscal year
7 for producer grain that the applicant procured in this state from that producer or producer agent. If
8 the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total
9 amount that the applicant will pay during the applicant's first complete fiscal year for producer
10 grain that the applicant will procure in this state from that producer or producer agent.

11 **SECTION 13.** 126.13(1)(a)(intro.) of the statutes is amended to read:

12 126.13(1)(a)(intro.) A grain dealer shall file an annual financial statement with the
13 department, before the department first licenses the grain dealer under s. 126.11, if the grain
14 dealer's license application ~~reports~~ shows any of the following:

15 **SECTION 14.** 126.13(1)(a)1. of the statutes is repealed and recreated to read:

16 126.13(1)(a)1. The grain volume reported under s. 126.11(9)(d), less any volume properly
17 identified under s. 126.11(9)(e)2., exceeds 200,000 bushels.

18 **SECTION 15.** 126.13(1)(b)(intro.) of the statutes is amended to read:

19 126.13(1)(b)(intro.) A grain dealer licensed under s. 126.11 shall file an annual financial
20 statement with the department during each license year if the grain dealer's license application for
21 that year ~~reports~~ shows any of the following:

22 **SECTION 16.** 126.13(1)(b)1. of the statutes is repealed and recreated to read:

1 126.13(1)(b)1. The grain volume reported under s. 126.11(9)(d), less any volume properly
2 identified under s.126.11(9)(e)2., exceeds 200,000 bushels and the grain dealer is not a contributing
3 grain dealer who procures producer grain in this state solely as a producer agent.

4 **SECTION 17.** 126.13(3) of the statutes is repealed and recreated to read:

5 126.13(3) REVIEWED OR AUDITED FINANCIAL STATEMENT. A financial statement under sub.
6 (1) or (2) shall be a reviewed or audited financial statement, except that the financial statement
7 shall be an audited financial statement if the grain dealer's license application shows that the grain
8 volume reported under s. 126.11(9)(d), less any volume properly identified under s.126.11(9)(e)2.,
9 exceeds 2.5 million bushels.

10 **SECTION 18.** 126.14(2)(b)2. of the statutes is amended to read:

11 126.14(2)(b)2. The department issues ~~a written notice~~ an order under s. 126.85
12 disqualifying the grain dealer ~~for cause, including failure to pay fund assessments under s. 126.15~~
13 ~~when due or failure to file a financial statement under s. 126.13 when due~~ from the fund.

14 **SECTION 19.** 126.14(2)(b)3. and 4. of the statutes are repealed.

15 **SECTION 20.** 126.14(4) and (5) of the statutes are created to read:

16 126.14(4) NOTICE TO PRODUCERS. A grain dealer who is disqualified from the fund shall
17 immediately give written notice of that disqualification to all producers and producer agents to
18 whom the grain dealer has unfulfilled contract obligations for producer grain procured in this state.
19 The department may by rule or order specify the form and content of the notice.

20 (5) DISQUALIFIED GRAIN DEALER TO PAY CASH ON DELIVERY. A grain dealer who is
21 disqualified from the fund shall pay cash on delivery for all producer grain procured in this state.

22 **SECTION 21.** 126.16(1)(b)(intro.) of the statutes is renumbered (b) and amended to read:

1 126.16(1)(b) A grain dealer who reports any deferred payment contract obligations under s.
2 126.11(9)(c) or 126.13(1)(d) shall file security with the department, and maintain that security until
3 the department releases it under sub. (8)(b), unless the grain dealer has positive equity and ~~one of~~
4 ~~the following applies:~~ the grain dealer's annual financial statement filed under s. 126.13(1) shows a
5 debt to equity ratio of not more than 4.0 to 1.0.

6 **SECTION 22.** 126.16(1)(b)1. and 2. of the statutes are repealed.

7 **SECTION 23.** 126.16(1)(c)2.(intro.) of the statutes is renumbered (c)2. and amended to read:

8 126.16(1)(c)2. A grain dealer shall file security with the department, and maintain that
9 security until the department releases it under sub. (8)(bm), if the grain dealer files an annual
10 financial statement under s. 126.13(1) that shows negative equity, a current ratio of less than 1.25 to
11 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain dealer's estimated default
12 exposure is greater than ~~the following amount:~~ \$20 million.

13 **SECTION 24.** 126.16(1)(c)2.a. to c. of the statutes are repealed.

14 **SECTION 25.** 126.16(2) of the statutes is repealed.

15 **SECTION 26.** 126.16(3)(b)(intro.) of the statutes is renumbered (b) and amended to read:

16 126.16(3)(b) A grain dealer who is only required to file or maintain security under
17 sub.(1)(c) shall at all times maintain security equal to the grain dealer's estimated default exposure,
18 as defined in sub.(1)(c)1., less ~~the following amount:~~ \$20 million.

19 **SECTION 27.** 126.16(3)(b)1. to 3. of the statutes are repealed.

20 **SECTION 28.** 126.16(4)(e) of the statutes is repealed.

21 **SECTION 29.** 126.16(8)(c) of the statutes is repealed.

22 **SECTION 30.** 126.17(3)(a)(intro.) of the statutes is renumbered (a) and amended to read:

1 126.17(3)(a) A grain dealer shall keep copies of all ~~of the following~~ records required under
2 this section and s. 126.18(2) for at least 6 years after the records are created.

3 **SECTION 31.** 126.17(3)(a)1. and 2. are repealed.

4 **SECTION 32.** 126.19(4) of the statutes is renumbered (4)(a) and amended to read:

5 126.19(4)(a) A grain dealer may not enter into a deferred payment contract with a producer
6 or producer agent unless the deferred payment contract ~~clearly discloses that it is not a storage~~
7 ~~contract. Whenever a grain dealer buys grain from a grain producer under a deferred payment~~
8 ~~contract, the grain dealer shall include~~ includes the following statement in ~~capitalized, boldface~~
9 clear and conspicuous print immediately above the contract signature line: **"This is not a storage**
10 **contract. The grain dealer (buyer) becomes the owner of any grain that the producer or**
11 **producer agent (seller) delivers to the grain dealer under this contract. The producer or**
12 **producer agent relinquishes ownership and control of the grain, and ~~becomes~~ may become an**
13 **unsecured creditor pending payment."**

14 **SECTION 33.** 126.19(4)(b) of the statutes is created to read:

15 126.19(4)(b) A grain dealer may not enter into a deferred payment contract in which a
16 grain producer or producer agent agrees to receive payment for grain more than 120 days after
17 delivering the grain to the grain dealer unless the contract clearly and conspicuously discloses that
18 the producer or producer agent is disqualified from filing a claim under s. 126.70 in the event that
19 the grain dealer defaults on payment under the deferred payment contract. The department may by
20 rule specify the form and content of the disclosure.

21 **SECTION 34.** 126.20(4)(intro.) and (a) of the statutes are amended to read:

22 126.20(4) PROHIBITED PRACTICES. No grain dealer, or any officer, employee or agent of a
23 grain dealer, may do any of the following:

(a) Misrepresent the weight, grade, or quality of producer grain received from or delivered to any person.

SECTION 35. 126.26(4)(g) of the statutes is created to read:

126.26(1)(g) Assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct a department officer, employee or agent in the performance of his or her duties.

SECTION 36. 126.26(3)(intro.) and (a) of the statutes are amended to read:

126.26(3)(intro.) LICENSE FEES AND SURCHARGES. A person applying for a grain warehouse keeper license shall pay the following fees and surcharges, ~~unless in amounts that the~~ department ~~specifies a different fee or surcharge amount~~ shall specify by rule:

(a) A nonrefundable basic license ~~processing fee of \$25 plus \$25 for each grain warehouse identified under sub. (2)(d). If a grain warehouse keeper operates 2 or more grain warehouses located within 0.5 miles of each other, the grain warehouse keeper may treat those grain warehouses as a single warehouse for purposes of this paragraph and par. (e), which may be based on the number of grain warehouses that the grain warehouse keeper operates.~~

SECTION 37. 126.26(3)(b) of the statutes is repealed and recreated to read:

126.26(3)(b) Grain warehouse inspection fees, which may be based on the number and size of grain warehouses that the grain warehouse keeper operates.

SECTION 38. 126.26(3)(c) to (f) of the statutes are amended to read:

126.26(3)(c) A supplementary inspection fee ~~of \$275~~ for each grain warehouse that the applicant operates in excess of one grain warehouse.

126.26(3)(d) A license surcharge ~~of \$500~~ if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain warehouse keeper without a license in violation of sub. (1). The applicant shall also pay any license fees, license

1 surcharges, and fund assessments that are still due for the license year in which the applicant
2 violated sub. (1).

3 (e) A license surcharge ~~of \$100~~ if during the preceding 12 months the applicant failed to
4 file an annual financial statement required under s. 126.28(1)(b) by the applicable deadline.

5 (f) A license surcharge ~~of \$100~~ if a renewal applicant fails to renew a license by the license
6 expiration date of August 31.

7 **SECTION 39.** 126.26(3m) and (5) of the statutes are amended to read:

8 126.26(3m) EFFECT OF PAYMENT OF SURCHARGES. Payment of a license surcharge under
9 sub. (3)(d) does not relieve the applicant of any other civil or criminal liability that results from the
10 violation of sub. (1), but does not constitute evidence of any law violations.

11 126.26(5) FEE CREDIT. If the fund balance contributed by grain warehouse keepers
12 exceeds \$300,000 on ~~June 30~~ May 31 of any license year, the department shall credit 12.5% of the
13 excess amount against grain warehouse inspection fees charged under sub. (3)(b) to contributing
14 grain warehouse keepers who file timely license renewal applications for the next license year. The
15 department shall credit each contributing grain warehouse keeper on a prorated basis, in proportion
16 to the total inspection fees that the warehouse keeper has paid under sub.(3)(b) for the 4 preceding
17 license years.

18 **SECTION 40.** 126.28(3) of the statutes is repealed and recreated to read:

19 126.28(3) REVIEWED OR AUDITED FINANCIAL STATEMENT. A financial statement under sub.
20 (1) or (2) shall be a reviewed or audited financial statement, except that the financial statement
21 shall be an audited financial statement if the warehouse keeper operates grain warehouses with a
22 combined capacity of more than 1.5 million bushels.

23 **SECTION 41.** 126.31(1)(b)2.(intro.) of the statutes is renumbered (b)2. and amended to read:

1 126.31(1)(b)2. A grain warehouse keeper shall file security with the department, and
2 maintain that security until the department releases it under sub. (8)(am), if the grain warehouse
3 keeper files an annual financial statement under s. 126.28(1) that shows negative equity, a current
4 ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain
5 warehouse keeper's estimated default exposure is greater than ~~the following amount:~~ \$20 million.

6 **SECTION 42.** 126.31(1)(b)2.a. to c. of the statutes are repealed.

7 **SECTION 43.** 126.31(2) of the statutes is repealed.

8 **SECTION 44.** 126.31(3)(b)(intro.) of the statutes is renumbered (3)(b) and amended to read:

9 126.31(3)(b) A grain warehouse keeper who is only required to file or maintain security
10 under sub.(1)(b) shall at all times maintain security equal to the grain warehouse keeper's estimated
11 default exposure, as defined in sub.(1)(b)1., less ~~the following amount:~~ \$20 million.

12 **SECTION 45.** 126.31(3)(b)1. to 3., (4)(e) and (8)(b) of the statutes are repealed.

13 **SECTION 46.** 126.32(5)(a)(intro.) of the statutes is renumbered (5)(a) and amended to read:

14 126.32(5)(a) A grain warehouse keeper shall retain all of the ~~following~~ records required
15 under this section and s. 126.33(3) for at least 6 years from the date of their creation.

16 **SECTION 47.** 126.32(5)(a)1. and 2. of the statutes are repealed.

17 **SECTION 48.** 126.34(5)(intro.) and (a) of the statutes are amended to read:

18 126.34(5)(intro.) PROHIBITED PRACTICES. No grain warehouse keeper, or any officer,
19 employee, or agent of a grain warehouse keeper, may do any of the following:

20 (a) Misrepresent the weight, grade, or quality of depositor grain received from or delivered
21 to any person.

22 **SECTION 49.** 126.34(5)(g) of the statutes is created to read:

1 126.34(5)(g) Assault, restrain, threaten, intimidate, impede, interfere with or otherwise
2 obstruct a department officer, employee or agent in the performance of his or her duties.

3 **SECTION 50.** 126.40(1) of the statutes is repealed and recreated to read:

4 126.40(1) "Contributing milk contractor" means a milk contractor who is licensed under s.
5 126.41(1), and who has not been disqualified from the fund under s. 126.45(3), to whom one of the
6 following applies:

7 (a) The milk contractor has paid one or more fund assessment payments under s. 126.46.

8 (b) The milk contractor is required to contribute to the fund but the contractor's first fund
9 assessment payment under s. 126.46(6) is not yet due.

10 **SECTION 51.** 126.41(3)(intro.) and (a) of the statutes are amended to read:

11 126.41(3) ANNUAL LICENSE FEES AND SURCHARGES. A milk contractor applying for ~~a~~ an
12 annual license under sub. (1) shall include the following fees and surcharges with the license
13 application, unless the department specifies a different fee or surcharge amount by rule:

14 (a) A nonrefundable basic license ~~processing~~ fee of \$25, ~~regardless of whether application~~
15 ~~is made after the beginning of a license year.~~

16 **SECTION 52.** 126.41(6)(a) of the statutes is amended to read:

17 126.41(6)(a) The total milk payroll obligations that the applicant incurred during the
18 applicant's last completed fiscal year, excluding any amounts properly identified under par. (e)3. If
19 the applicant has not yet operated as a milk contractor, the applicant shall estimate the total milk
20 payroll obligations that the applicant will incur during the applicant's first complete fiscal year,
21 excluding any amounts properly identified under par. (e)3.

22 ***[DRAFTER'S NOTE: The amount reported under s. 126.41(6)(a) is used for the***
23 ***following purposes:***
24

- 1 • *To calculate milk contractor fund assessments under s. 126.46 (as currently*
- 2 *implemented by DATCP rules under s. ATCP 100.135, Wis. Adm. Code).*
- 3 • *To determine, under s. 126.47(1)(a), whether a milk contractor with negative equity is*
- 4 *required to file security with DATCP when DATCP licenses the milk contractor for*
- 5 *the first time.]*

6

7 SECTION 53. 126.41(6)(b) of the statutes is repealed and recreated to read:

8 126.41(6)(b) Either of the following amounts:

9 1. The largest amount of unpaid milk payroll obligations that the milk contractor had at any

10 time during the milk contractor's last completed fiscal year.

11 2. The largest amount of milk payroll obligations that the milk contractor incurred in any

12 single month during the applicant's last completed fiscal year.

13 *[DRAFTER'S NOTE: The amounts reported under s. 126.41(6)(b) and (9) are used to*

14 *determine all of the following:*

- 15
- 16 • *Security filing requirements, if any, under s. 126.47.*
- 17 • *The amount by which fund assessments are reduced under s. 126.46(2), as recreated*
- 18 *by SECTION 64 of this bill, for contributing milk contractors who file security under s.*
- 19 *126.47.]*
- 20

21 SECTION 54. 126.41(6)(d) of the statutes is renumbered (f).

22 SECTION 55. 126.41(6)(d) and (e) of the statutes are created to read:

23 126.41(6)(d) The total hundredweight amount of producer milk that the applicant procured

24 in this state during the applicant's most recently completed fiscal year, less any amounts properly

25 identified under par. (e)2. If the applicant has not yet operated as a milk contractor, the applicant

26 shall estimate the total hundredweight amount of producer milk that the applicant will procure in

27 this state during the applicant's first fiscal year, less any amounts properly identified under par.

28 (e)2.

29 *[DRAFTER'S NOTE: The amount reported under s. 126.41(6)(d) is used to determine*

30 *all of the following:*

31

- 1 • *Milk contractor financial statement filing requirements under s. 126.44. See ss.*
2 *126.44(1) and (5) as modified by SECTIONS 56 and 57 of this bill.*
- 3 • *Conditions under which DATCP may release security filed by a milk contractor. See*
4 *s. 126.47(7)(a)1. as modified by SECTION 70 of this bill.]*

5
6 (e) All of the following information related to each producer or producer agent that under s.

7 126.70(1)(b) has permanently waived the right to file a default claim against the applicant:

8 1. A copy of the written waiver that the producer or producer agent has filed with the
9 department under s. 126.70(1)(b).

10 2. The total hundredweight amount of producer milk that the applicant procured in this
11 state from that producer or producer agent during the applicant's last-completed fiscal year. If the
12 applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total
13 hundredweight amount of producer milk that the applicant will procure in this state from that
14 producer or producer agent during the applicant's first complete fiscal year.

15 3. The total milk payroll obligations that the applicant incurred during the applicant's last-
16 completed fiscal year for producer milk that the applicant procured in this state from that producer
17 or producer agent. If the applicant has not yet operated as a milk contractor, the applicant shall
18 estimate the total milk payroll obligations that the applicant will incur during the applicant's first
19 complete fiscal year for producer milk that the applicant will procure in this state from that
20 producer or producer agent.

21 **SECTION 56.** 126.41(9) of the statutes is repealed and recreated to read:

22 126.41(9) A milk contractor who files and maintains security under s. 126.47 shall report to
23 the department, on a monthly basis, either of the following:

- 24 1. The total amount of the milk contractor's unpaid milk payroll obligations.
- 25 2. The total amount of milk payroll obligations that the milk contractor incurred, during the
26 preceding month, for producer milk procured in this state.

1 ***[DRAFTER'S NOTE: The amounts reported under s. 126.41(6)(b) and (9) are used to***
2 ***determine all of the following:***
3

- 4 • ***Security filing requirements, if any, under s. 126.47.***
5 • ***The amount by which fund assessments are reduced under s. 126.46(2), as recreated***
6 ***by SECTION 64 of this bill, for contributing milk contractors who file security under s.***
7 ***126.47.]***
8

9 **SECTION 57.** 126.44(1)(a) and (c)1. of the statutes are amended to read:

10 126.44(1)(a) A milk contractor shall file an annual financial statement with the department
11 before the department first licenses the milk contractor under s. 126.41(1), unless the milk
12 contractor reports a milk volume of no more than \$1,500,000 in annual milk payroll obligations
13 150,000 hundredweight under s. ~~126.41(6)(a)~~ 126.41(6)(d).

14 (c)1. A contributing milk contractor who reports a milk volume of no more than \$1,500,000
15 ~~in annual milk payroll obligations~~ 150,000 hundredweight under s. ~~126.41(6)(a)~~ 126.41(6)(d).

16 **SECTION 58.** 126.44(5) of the statutes is repealed and recreated to read:

17 126.44(5) A milk contractor filing an annual financial statement under sub. (1) or (2) shall
18 file a reviewed or audited financial statement, except that the financial statement shall be an audited
19 financial statement if the milk contractor reports a milk volume of more than 2.5 million
20 hundredweight under s. 126.41(6)(d).

21 **SECTION 59.** 126.45(3)(a) of the statutes is amended to read:

22 126.45(3)(a) A milk contractor who is required to file security under s. 126.47(1)(a) is
23 disqualified from the fund until the department releases that security under s. 126.47(7)(a). ~~This~~
24 ~~paragraph does not apply during the period beginning on May 1, 2002, and ending on April 30,~~
25 ~~2007, to a qualified producer agent who files security under s. 126.47(3)(a)3.~~

26 **SECTION 60.** 126.45(3)(b) of the statutes is repealed and recreated to read:

1 126.45(3)(b) A milk contractor is disqualified from the fund if the department does any of
2 the following:

- 3 1. Denies, suspends or revokes the milk contractor's license.
- 4 2. Issues an order under s. 126.85 disqualifying the milk contractor from the fund.

5 **SECTION 61.** 126.45(3)(c) of the statutes is repealed.

6 **SECTION 62.** 126.45(4)(a) of the statutes is amended to read:

7 126.45(4)(a) A milk contractor disqualified under sub. ~~(3)(e)~~ (3)(b)2. may not engage in
8 any activities for which a license is required under s. 126.41(1)(a) if the milk contractor files an
9 annual, quarterly, or interim financial statement under s. 126.44 that shows a current ratio of less
10 than 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity.

11 **SECTION 63.** 126.45(4)(d) of the statutes is created to read:

12 126.45(4)(d) A milk contractor that is disqualified from the fund under sub. (3)(a) or (b)
13 shall immediately give written notice of that disqualification to all producers and producer agents to
14 whom the contractor has unpaid obligations for producer milk procured in this state. The
15 department may by rule specify the required form and content of the notice.

16 **SECTION 64.** 126.46 of the statutes is repealed and recreated to read:

17 **126.46 Contributing milk contractors; fund assessments.** (1) GENERAL. A contributing
18 milk contractor shall pay, for each license year, a fund assessment that the department shall specify
19 by rule.

20 *[DRAFTER'S NOTE: DATCP rules already specify the formula used to calculate milk*
21 *contractor fund assessments (see ch. ATCP 100, Wis. Adm. Code). This bill does not*
22 *change the current fund assessment calculation, except that this bill does all of the*
23 *following:*

- 24 • *Changes the amount by which a contributing milk contractor's assessment is reduced*
25 *if the milk contractor also files security under s. 126.47(1)(b), Stats. (see sub. (2)*
26 *below).*
27

- 1
- 2 • *Allows milk contractors to exclude, from their reported annual milk payroll*
3 *obligations, payroll obligations to certain jointly-owned entities (see SECTION 53*
4 *above). Since the milk contractor's fund assessment is based in part on the*
5 *contractor's milk payroll obligations, any exclusion will reduce the contractor's fund*
6 *assessment accordingly.]*
7

8 (2) REDUCED ASSESSMENT FOR CONTRIBUTING MILK CONTRACTOR WHO ALSO FILES

9 SECURITY. If a contributing milk contractor also files security under s. 126.47(1)(b), the
10 contributing milk contractor's fund assessment under sub. (1) shall be reduced by subtracting from
11 that assessment an amount determined as follows:

12 (a) Divide the amount of security that the milk contractor is required to file under s.
13 126.47(3)(b) by 75% of the lower of the following amounts:

14 1. The highest amount of unpaid milk payroll obligations, reported under s. 126.41(6)(b) or
15 (9), which the milk contractor has had at any time during the last 12 months.

16 2. The highest amount of milk payroll obligations, reported under s. 126.41(6)(b) or (9),
17 which the milk contractor has incurred in any month during the last 12 months.

18 (b) Multiply the amount under par. (a) by the fund assessment that would apply to the
19 contractor in the absence of any reduction under this subsection.

20 **SECTION 65.** 126.47(1)(b) of the statutes is repealed and recreated to read:

21 126.47(1)(b) A milk contractor shall file security with the department, and shall maintain
22 that security until the department releases it under sub. (7)(am), if at any time all of the following
23 apply:

24 1. The milk contractor's last annual financial statement under s. 126.44(1) shows negative
25 equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 2.0 to 1.0.

26 2. The milk contractor's estimated default exposure under par. (c) exceeds \$20 million.

27 **SECTION 66.** 126.47(1)(c) of the statutes is created to read:

1 126.47(1)(c) A milk contractor's estimated default exposure is equal to 75% of the lower of
2 the following amounts:

3 1. The highest amount of unpaid milk payroll obligations, reported under s. 126.41(6)(b) or
4 (9), which the milk contractor has had at any time during the last 12 months.

5 2. The highest amount of milk payroll obligations, reported under s. 126.41(6)(b) or (9),
6 which the milk contractor has incurred in any month during the last 12 months.

7 **SECTION 67.** 126.47(2) of the statutes is repealed.

8 **SECTION 68.** 126.47(3) of the statutes is repealed and recreated to read:

9 126.47(3) AMOUNT OF SECURITY. (a) Except as provided in par. (b), a milk contractor who
10 is required to file or maintain security under sub. (1) shall at all times maintain security in an
11 amount that is equal to at least 75% of the lower of the following amounts:

12 1. The highest amount of unpaid milk payroll obligations, reported under s. 126.41(6)(b) or
13 (9), which the milk contractor has had at any time during the last 12 months.

14 2. The highest amount of milk payroll obligations, reported under s. 126.41(6)(b) or (9),
15 which the milk contractor has incurred in any month during the last 12 months.

16 (b) A milk contractor who is only required to file or maintain security under sub. (1)(b)
17 shall at all times maintain security equal to the milk contractor's estimated default exposure under
18 sub. (1)(c) less \$20 million.

19 **SECTION 69.** 126.47(4)(e) of the statutes is repealed.

20 **SECTION 70.** 126.47(7)(a)1. and 2. of the statutes are amended to read:

21 126.47(7)(a)1. The milk contractor reports ~~not more than \$1,500,000 in milk payroll~~
22 ~~obligations under s. 126.41(6)(a)~~ a milk volume of not more than 150,000 hundredweight under s.
23 126.41(6)(d) for at least 2 consecutive years and the milk contractor pays the ~~quarterly~~ fund

1 assessment installment amount that would have been required of the milk contractor if the milk
2 contractor had been a contributing milk contractor on the date when the most recent quarterly
3 installment date under s. 126.46(6) was due.

4 2. The milk contractor's annual financial statement under s. 126.44 shows positive equity
5 for at least 2 consecutive years, ~~the financial statements are audited or, if the milk contractor reports~~
6 ~~\$6,000,000 or less in annual milk payroll obligations under s. 126.41(6)(a), reviewed,~~ and the milk
7 contractor pays the ~~quarterly~~ fund assessment installment amount that would have been required of
8 the milk contractor if the milk contractor had been a contributing milk contractor on the date when
9 the most recent quarterly installment date under s. 126.46(6) was due.

10 **SECTION 71.** 126.47(7)(b) of the statutes is repealed.

11 **SECTION 72.** 126.50(intro.) of the statutes is amended to read:

12 **126.50(intro.) Milk contractors; prohibited practices.** No milk contractor, or any
13 officer, employee, or agent of a milk contractor, may do any of the following:

14 **SECTION 73.** 126.50(6) of the statutes is created to read:

15 126.50(6) Assault, restrain, threaten, intimidate, impede, interfere with or otherwise
16 obstruct a department officer, employee or agent in the performance of his or her duties.

17 **SECTION 74.** 126.56(4) of the statutes is amended to read:

18 126.56(4) LICENSE FEES AND SURCHARGES. A vegetable contractor applying for an annual
19 license under sub. (1) shall pay the following fees and surcharges, ~~unless in amounts that the~~
20 ~~department specifies a different fee or surcharge amount~~ shall specify by rule:

21 (a) A nonrefundable basic license ~~processing~~ fee of \$25.

(b) A fee of ~~\$25 plus 5.75 cents for each \$100 in~~ based on the amount of contract obligations reported under sub. (9)(a), less any credit provided under sub. (6), except that this paragraph does not apply to a vegetable contractor to whom par. (f) applies.

(c) A license surcharge ~~of \$500~~ if the department determines that, within 365 days before submitting the license application, the applicant operated as a vegetable contractor without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated sub. (1).

(d) A license surcharge ~~of \$100~~ if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.58(1)(b) by the applicable deadline.

(e) A license surcharge ~~of \$100~~ if a vegetable contractor fails to renew a license by the expiration date of January 31.

(f) ~~If A fee if~~ the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595(1), ~~a fee of \$500 or another amount established by the department by rule.~~

SECTION 75. 126.56(4m) of the statutes is amended to read:

126.56(4m) EFFECT OF PAYMENT OF SURCHARGE. Payment of a license surcharge under sub. ~~(3)(e)~~ (4)(c) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

SECTION 76. 126.56(9)(am) and (i) of the statutes are created to read:

126.56(9)(am) The amount under par. (a) less any amounts properly identified under par. (i)2.

/DRAFTER'S NOTE:

- *The amount reported under s. 126.56(9)(a) of the current law is used to calculate part of the vegetable contractor's license fees under s. 126.56. See s. 126.56(4)(b) as modified by SECTION 74 of this bill.*
- *The amount reported under s. 126.56(9)(am), as created by this bill, is used to determine all of the following:*
 - *The vegetable contractor's fund assessment under s. 126.60. See s. 126.60(1)(a) and (b) as modified by SECTION 82 of this bill.*
 - *The vegetable contractor's financial statement filing requirements under s. 126.58. See s. 126.58(1) and (3) as modified by SECTIONS 77 and 78 of this bill.*
 - *Whether, under s. 126.61(1)(a) as modified by SECTION 84 of this bill, a vegetable contractor with negative equity is required to file security with DATCP when DATCP licenses the vegetable contractor for the first time.]*

(i) All of the following information related to each producer or producer agent that under s. 126.70(1)(b) has permanently waived the right to file a default claim against the applicant:

1. A copy of the written waiver that the producer or producer agent has filed with the department under s. 126.70(1)(b).
2. The total contract obligations that the applicant incurred during the applicant's last-completed fiscal year under vegetable procurement contracts with that producer or producer agent. If the applicant has not yet operated as a vegetable contractor, the applicant shall estimate the total contract obligations that the applicant will incur during the applicant's first complete fiscal year under vegetable procurement contracts with that producer or producer agent.

SECTION 77. 126.56(12) of the statutes is repealed and recreated to read:

126.56(12) MONTHLY REPORTS. A vegetable contractor who files security under s. 126.61 shall report to the department, on a monthly basis, the total amount of the vegetable contractor's unpaid contract obligations.

[DRAFTER'S NOTE: The amounts reported under s. 126.56(9)(b) and (12) are used to determine all of the following:

- *Security filing requirements, if any, under s. 126.61 as modified by SECTIONS 85 to 91 of this bill.*

- 1 • *The amount by which fund assessments are reduced under s. 126.60(5m), as modified*
2 *by SECTION 84 of this bill, for contributing vegetable contractors who file security*
3 *under s. 126.47.]*
4

5 **SECTION 78.** 126.58(1)(a) and (b) of the statutes are amended to read:

6 126.58(1)(a) Except as provided in par. (c), a vegetable contractor shall file an annual
7 financial statement with the department, before the department first licenses the vegetable
8 contractor under s. 126.56(1), if the vegetable contractor reports more than \$500,000 in contract
9 obligations under s. ~~126.56(9)(a)~~ 126.56(9)(am).

10 (b) Except as provided in par. (c), a vegetable contractor licensed under s. 126.56(1) shall
11 file an annual financial statement with the department during each license year if the vegetable
12 contractor's license application for that year reports more than \$500,000 in contract obligations
13 under s. ~~126.56(9)(a)~~ 126.56(9)(am). The vegetable contractor shall file the annual financial
14 statement by the 15th day of the 4th month following the close of the vegetable contractor's fiscal
15 year, except that the department may extend the filing deadline for up to 30 days if the vegetable
16 contractor, or the accounting reviewing or auditing the financial statement, files a written extension
17 request at least 10 days before the filing deadline.

18 **SECTION 79.** 126.58(3) of the statutes is repealed and recreated to read:

19 126.58(3) REVIEWED OR AUDITED FINANCIAL STATEMENT. A financial statement under sub.
20 (1) or (2) shall be a reviewed or audited financial statement, except that the financial statement
21 shall be an audited financial statement if the amount last reported under s. 126.56(9)(am) is more
22 than \$7.5 million.

23 **SECTION 80.** 126.59(2)(c) of the statutes is repealed and recreated to read:

1 126.59(2)(c) A vegetable contractor is disqualified from the fund, and required to pay cash
2 on delivery under vegetable procurement contracts, if the department issues an order under s.
3 126.85 disqualifying the vegetable contractor from the fund.

4 **SECTION 81.** 126.59(4) of the statutes is created to read:

5 126.59(4) NOTICE TO PRODUCERS; PAYMENT TERMS. A vegetable contractor who is
6 disqualified from the fund under sub. (2)(b) or (c) shall immediately give notice of that
7 disqualification to all producers and producer agents to whom the contractor has unpaid obligations
8 under vegetable procurement contracts. The department may by rule specify the required form and
9 content of the notice. If a vegetable contractor is disqualified from the fund under sub. (2)(c), but
10 still licensed under s. 126.56, the vegetable contractor shall pay cash on delivery under all
11 vegetable procurement contracts.

12 **SECTION 82.** 126.60(1)(a) and (b) of the statutes are amended to read:

13 126.60(1)(a) The vegetable contractor's current ratio assessment. The current ratio
14 assessment for a license year equals the vegetable contractor's current ratio assessment rate under
15 sub. (2) multiplied by the amount reported under s. ~~126.56(1)(a)~~ 126.56(1)(am) in the vegetable
16 contractor's license application for that license year.

17 (b) The vegetable contractor's debt to equity ratio assessment. The debt to equity ratio
18 assessment for a license year equals the vegetable contractor's debt to equity ratio assessment rate
19 under sub. (4) multiplied by the amount reported under s. ~~126.56(9)(a)~~ 126.56(9)(am) in the
20 vegetable contractor's license application for that license year.

21 **SECTION 83.** 126.60(1)(c) of the statutes is repealed.

22 **SECTION 84.** 126.60(5m)(intro.) and (a) of the statutes are amended to read:

1 126.60(5m)(intro.) REDUCED ASSESSMENT FOR CERTAIN VEGETABLE CONTRACTORS FILING
2 SECURITY. If a vegetable contractor files security under s. ~~126.61(1)(bm)~~ 126.61(1)(b), the
3 vegetable contractor's assessment is the amount determined under sub. (1) reduced by an amount
4 determined as follows:

5 (a) Divide the amount of security that the vegetable contractor is required to file as
6 determined under s. 126.61(3)(b) by the amount of the vegetable contractor's estimated default
7 exposure, ~~as defined in s. 126.61(1)(bm)~~ calculated according to s. 126.61(1)(b)2.

8 **SECTION 85.** 126.61(1)(a)1. of the statutes is amended to read:

9 126.61(1)(a)1. The vegetable contractor reports more than \$500,000 in annual contract
10 obligations under s. ~~126.56(9)(a)~~ 126.56(9)(am).

11 **SECTION 86.** 126.61(1)(b) of the statutes is repealed and recreated to read:.

12 126.61(1)(b) Except as provided in par. (c), a vegetable contractor shall file security with
13 the department, and maintain that security until the department releases it under sub. (7)(bm), if all
14 of the following apply:

15 1. The vegetable contractor's latest annual financial statement under s.126.58(1) shows
16 negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to
17 1.0.

18 2. The vegetable contractor's estimated default exposure, calculated as seventy-five percent
19 of the amount of unpaid contract obligations last reported under s. 126.56(9)(b) or (12), is greater
20 than \$20 million.

21 **SECTION 87.** 126.61(1)(bm) of the statutes is repealed.

22 **SECTION 88.** 126.61(2) of the statutes is repealed.

23 **SECTION 89.** 126.61(3)(a) of the statutes is repealed and recreated to read:

1 126.61(3)(a) Except as provided in par. (b), a vegetable contractor who is required to file or
2 maintain security under this section shall at all times maintain security that is at least equal to
3 seventy-five percent of the amount of unpaid contract obligations last reported under s.

4 126.56(9)(b) or (12), except that this amount is not required of a contributing vegetable contractor.

5 **SECTION 90.** 126.61(3)(b)(intro.) of the statutes is renumbered (3)(b) and amended to read:

6 126.61(3)(b) A vegetable contractor who is only required to file or maintain security under
7 sub. ~~(1)(bm)~~ (1)(b) shall at all times maintain security equal to the vegetable contractor's estimated
8 default exposure, ~~as defined in sub. (1)(bm)1.~~ calculated according to sub. (1)(b)2., less ~~the~~
9 ~~following amount: \$20 million.~~

10 **SECTION 91.** 126.61(3)(b)1. to 3., (4)(e) and (7)(c) of the statutes are repealed.

11 **SECTION 92.** 126.62(2)(intro.) of the statutes is renumbered (2) and amended to read:

12 126.62(2) RECORDS RETENTION. A vegetable contractor shall keep all ~~of the following~~
13 records required under sub. (1) for at least 6 years from the date of their creation.

14 **SECTION 93.** 126.62(2)(a) and (b) of the statutes are repealed.

15 **SECTION 94.** 126.63(4)(c) of the statutes is repealed and recreated to read:

16 126.63(4)(c) A vegetable contractor may, in accordance with a deferred payment contract,
17 pay after January 31 for processing vegetables delivered on or before December 31 if all of the
18 following apply:

- 19 1. The vegetable contractor complies with sub. (5).
- 20 2. The deferred payment contract specifies a date by which full payment is due.
- 21 3. The deferred payment contract clearly and conspicuously discloses that the producer or
22 producer agent is disqualified from filing a default claim under s. 126.70 in the event that the

1 vegetable contractor defaults on payment under the deferred payment contract. The department
2 may by rule specify the required form and content of the disclosure.

3 **SECTION 95.** 126.64(intro.) of the statutes is amended to read:

4 **126.64(intro.) Vegetable contractors; prohibited practices.** No vegetable contractor, or
5 any officer, employee or agent of a vegetable contractor, may do any of the following:

6 **SECTION 96.** 126.64(7) of the statutes is created to read:

7 126.64(7) Assault, restrain, threaten, intimidate, impede, interfere with or otherwise
8 obstruct a department officer, employee or agent in the performance of his or her duties.

9 **SECTION 97.** 126.70(1)(intro.) of the statutes is renumbered (1)(a)(intro.) and amended to
10 read:

11 126.70(1)(a)(intro.) Any of the following persons may file a default claim with the
12 department against a contractor who is licensed; or required to be licensed under this chapter,
13 unless that person has waived that right pursuant to par. (b):

14 **SECTION 98.** 126.70(1)(a) to (d) of the statutes are renumbered (1)(a)1. to 4.

15 **SECTION 99.** 126.70(1)(b) and (c) of the statutes are created to read:

16 126.70(1)(b) A producer or producer agent may permanently waive the right to file a
17 default claim against a grain dealer, milk contractor or vegetable contractor if, at the time of the
18 waiver, any of the following apply:

19 1. The producer or producer agent owns more than 50% of the grain dealer, milk contractor
20 or vegetable contractor.

21 2. Persons that collectively own more than 50% of the producer or producer agent also
22 collectively own more than 50% of the grain dealer, milk contractor or vegetable contractor.

(c) A waiver under par. (b) shall be filed with the department in writing, on a form provided by the department. The waiver shall include documentation to show that the producer or producer agent meets the criteria under par. (b), and that the individuals signing the waiver are authorized to do so on behalf of the producer or producer agent.

[DRAFTER'S NOTE: For example:

- ***Suppose that 2 individual investors own 51% of a grain farming LLC, and that the same 2 individual investors own 51% of a grain dealer corporation that buys grain from the LLC. The LLC (grain producer) may waive its right to file a default claim against the corporation (grain dealer), because the same individuals own more than 50% of both entities.***
- ***Suppose that a dairy cooperative corporation (milk contractor) buys milk from, or markets milk as a producer agent for, its 100 dairy producer members:***
 - ***None of the individual producers may waive the right to file a default claim against the dairy cooperative (because no individual producer owns more than 50% of the cooperative).***
 - ***If the cooperative owns a separately-incorporated milk marketing subsidiary (producer agent) that procures milk from cooperative members and markets it to the cooperative's separately-incorporated milk processing subsidiary, the milk marketing subsidiary may waive the right to file a default claim against the milk processing subsidiary (because both entities are owned by the cooperative corporation). However, none of the individual milk producers may waive the right to file a default claim against the milk marketing subsidiary (which is itself a "milk contractor" under ch. 126), because no individual producer owns more than 50% of the milk marketing subsidiary.]***

SECTION 100. 126.70(4)(title) of the statutes is amended to read:

126.70(4)(title) AUDITING AND DISALLOWING CLAIMS.

SECTION 101. 126.70(4)(f) to (k) of the statutes are created to read:

126.70(4)(f) That the defaulting contractor paid the claim amount by check, but the claimant failed to present that check for payment within 30 days of receipt.

(g) That the claim relates to a payment that first became due under a grain deferred payment contract more than 120 days after the grain was delivered.

(h) That the claim relates to a payment that first became due after January 31 of any year, under a vegetable deferred payment contract, for vegetables tendered or delivered on or before December 31 of the preceding year.

(i) That the claim pertains to grain, milk or vegetables that were never tendered to or received by the defaulting contractor. This paragraph does not apply to contracted vegetable acreage that the vegetable contractor chooses to leave unharvested.

(j) That, under s. 126.70(1)(b), the claimant has waived the right to file the claim.

(k) That any of the following circumstances exists, and causes the claim to be an unfair or unreasonable claim against the fund, regardless of whether the claimant has given any waiver under s. 126.70(1)(b):

1. The claimant owned more than 50% of the defaulting contractor at the time of the default, or at relevant times prior to the default.

2. Persons who collectively owned more than 50% of the claimant also owned more than 50% of the defaulting contractor at the time of the default, or at relevant times prior to the default.

3. The claimant or any of the claimant's owners, officers or managers had substantial management control, at the time of the default or at relevant times prior to the default, over any of the defaulting contractor's operations that are implicated in the default.

4. The claimant or any of the claimant's owners, officers or managers conspired with the defaulting contractor or any of the defaulting contractor's owners, officers or managers to create a default and resulting claim against the fund.

5. Other circumstances that the department specifies by rule.

SECTION 102. 126.70(6)(g) of the statutes is created to read:

1 126.70(6)(g) Specify any further actions required of claimants, including any further
2 actions required to obtain payment under a trade credit insurance policy or other contingent
3 financial backing under s. 126.06.

4 **SECTION 103.** 126.71(1)(a)(intro.) of the statutes is amended to read:

5 126.71(1)(a)(intro.) ~~Except as provided in par. (d) or (e), for~~ For each default claim allowed
6 under s. 126.70 against a grain dealer or milk contractor who was a contributing contractor when
7 the default occurred:

8 **SECTION 104.** 126.71(1)(d) and (e) of the statutes are repealed.

9 **SECTION 105.** 126.71(3)(a)1. to 3. of the statutes are repealed.

10 **SECTION 106.** 126.71(3)(a)4. and 5. of the statutes are renumbered (a)1. and 2.

11 **SECTION 107.** 126.72(2) of the statutes is amended to read:

12 126.72(2) PROCEEDS OF CONTINGENT FINANCIAL BACKING. The department, at the direction
13 of the secretary of agriculture, trade and consumer protection, shall draw on the contingent
14 financial backing acquired under s. 126.06 to make payments authorized under s. 126.71(1), to the
15 extent that those payments exceed the deductible amount in sub. (3). If the contingent financial
16 backing is in the form of a trade credit insurance policy that appears to cover the authorized
17 payments, the department shall file an appropriate claim against that policy.

18 **SECTION 108.** 126.73(1) of the statutes is amended to read:

19 126.73(1) ~~PAYMENTS FROM THE FUND GENERAL.~~ Except as provided in sub. (2) or (3),
20 the department may demand and collect, from a contractor, any claim amounts that the department
21 pays under s. 126.72(1), or under s. 126.72(2) with the proceeds of ~~a loan under s. 126.06(1)(b)~~
22 contingent financial backing under s. 126.06(1), because of the contractor's default.

23 **SECTION 109.** 126.73(3) of the statutes is created to read:

1 126.73(3) TRADE CREDIT INSURANCE PAYMENTS. If the department files a claim against a
2 trade credit insurance policy under s. 126.72(2), and obtains and uses insurance claim payments to
3 make payments authorized under s. 126.72(2), the trade credit insurer may recover the amount of
4 those payments from the defaulting contractor.

5 **SECTION 110.** 126.81(2) and (3) of the statutes are amended to read:

6 126.81(2) ~~Modify the~~ Establish and modify license fees and surcharges as provided in ~~s. ss.~~
7 126.11, 126.26(3), 126.41(3), 126.42, ~~or~~ and 126.56(4).

8 (3) ~~Modify the~~ Establish and modify fund assessments as provided under ~~s. ss.~~ 126.15,
9 126.30, 126.46, ~~or~~ 126.60, ~~as provided in~~ and 126.88.

10 **SECTION 111.** 126.85(1) of the statutes is amended to read:

11 126.85(1) GENERAL. The department may, by special order, require a contractor to remedy
12 a violation of this chapter ~~or~~, a rule promulgated under this chapter, or a condition listed under s.
13 126.86(1). The department may order the contractor to take specific remedial actions, including
14 actions to remedy deficiencies or to prevent losses to persons protected under this chapter. An
15 order under this subsection may disqualify the contractor from the fund pending compliance with
16 the order. Except as provided in sub. (2), the department shall give the contractor notice and an
17 opportunity for hearing before the department issues an order.

18 **SECTION 112.** 126.85(2)(h) and (i) of the statutes are created to read:

19 126.85(2)(h) A contractor fails to file a financial statement with the department by the time
20 or in the form required under this chapter.

21 (i) A contractor fails to pay an amount owed under s. 126.73 within 60 days after the
22 contractor receives a written demand for payment under s. 126.73 from the department or other
23 person to whom that payment is due under s. 126.73.

1 **SECTION 113.** 126.86(1)(f) of the statutes is repealed and recreated to read:

2 126.86(1)(f) A contractor fails to pay an amount owed under s. 126.73 within 60 days after
3 the contractor receives a written demand for payment under s. 126.73 from the department or other
4 person to whom that payment is due under s. 126.73.

5 **SECTION 114.** 126.86(1)(g) of the statutes is repealed.

6 **SECTION 115.** 126.86(2) and (3)(a) of the statutes are amended to read:

7 126.86(2) HEARING ON LICENSE ACTION; GENERAL. Except as provided in sub. (3), the
8 department shall give a contractor notice and an opportunity for hearing before the department
9 suspends, revokes, or imposes conditions on a current license held by the contractor.

10 (3) SUMMARY ACTION. (a) The department may, without prior notice or hearing,
11 summarily suspend, revoke, or impose conditions on a current license held by a contractor if the
12 department finds that summary action is necessary to prevent a clear and imminent threat of harm
13 to persons protected under this chapter. Conditions indicating a clear and imminent threat of harm
14 may include those identified in s. 126.85(2).

15 **SECTION 116.** 126.88(title) of the statutes is amended to read:

16 **126.88(title) ~~Modifying~~ Establishing fund assessments.**

17 **SECTION 117.** 126.88(intro.) of the statutes is renumbered (1)(intro.) and amended to read:

18 126.88(1)(intro.) The department may by rule establish and modify ~~the~~ fund assessments as
19 provided under ss. 126.15, 126.30, 126.46, or 126.60. The department shall modify fund
20 assessments as necessary to do all of the following:

21 **SECTION 118.** 126.88(1) to (5) of the statutes are renumbered (1)(a) to (e) and amended to
22 read:

1 126.88(1)(a) Maintain an overall fund balance of at least \$5,000,000 ~~after January 1, 2006,~~
2 but not more than \$22,000,000 ~~at any time.~~

3 (b) Maintain a fund balance attributable to grain dealers of at least \$1,000,000 ~~after January~~
4 ~~1, 2006,~~ but not more than \$6,000,000 ~~at any time.~~

5 (c) Maintain a fund balance attributable to grain warehouse keepers of at least \$200,000
6 ~~after January 1, 2006,~~ but not more than \$1,000,000 ~~at any time.~~

7 (d) Maintain a fund balance attributable to milk contractors of at least \$3,000,000 ~~after~~
8 ~~January 1, 2006,~~ but not more than \$12,000,000 ~~at any time.~~

9 (e) Maintain a fund balance attributable to vegetable contractors of at least \$800,000 ~~after~~
10 ~~January 1, 2006,~~ but not more than \$3,000,000 ~~at any time.~~

11 **SECTION 119.** 126.88(2) of the statutes is created to read.

12 126.88(2)(a) If any fund balance under sub. (1)(a) to (e) falls below the minimum amount
13 required for that balance under sub. (1)(a) to (e), the department shall by rule establish modified
14 assessment rates for contractors contributing to that portion of the fund that are adequate to achieve
15 and maintain the required minimum balance within a reasonable period of time. Except as
16 provided in par. (b), the department may modify assessment rates by the emergency rule procedure
17 under s. 227.24 without having to make a finding under s. 227.24(1)(a).

18 (b) An emergency rule under sub. (a) may not require a modified assessment rate to take
19 effect until the beginning of the next full license year or modify an assessment rate so it is more
20 than the existing assessment rate for contractors in the first year of fund participation.

(END)